

the portions which are exempt under this subpart.

**§ 2604.402 Business information.**

(a) *In general.* Business information provided to the Office of Government Ethics by a submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). Any such designation will expire 10 years after the records were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure notification.* The General Counsel will provide a submitter with prompt written notice of a FOIA request regarding its business information if:

(1) The information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the FOIA; or

(2) The General Counsel has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(d) *Opportunity to object to disclosure.* A submitter has five working days from receipt of the predisclosure notification to provide a written statement of any objection to disclosure. Such statement shall specify all the grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is deemed to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a submitter pursuant to

this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The General Counsel will consider all objections raised by a submitter and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the General Counsel decides to disclose business information over the objection of a submitter, he will send the submitter a written notice at least 10 working days before the date of disclosure containing:

(1) A statement of the reasons why the submitter's objections were not sustained;

(2) A copy of the records which will be disclosed or a written description of the records; and

(3) A specified disclosure date. The requester shall also be notified of the General Counsel's determination to disclose records over a submitter's objections.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the General Counsel shall promptly notify the submitter.

(g) *Exceptions to predisclosure notification.* The notice requirements in paragraph (c) of this section do not apply if:

(1) The General Counsel determines that the information should not be disclosed;

(2) The information has been published previously or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the General Counsel will provide the submitter with written notice of any final decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

**Subpart E—Schedule of Fees**

**§ 2604.501 Fees to be charged—general.**

(a) *Policy.* Fees shall be assessed according to the schedule contained in